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No. 711

In the

Supreme Court of the United States

OCTOBER TERM, 1947

MISSOURI-KANSAS-TEXAS RAILROAD COMPANY, *et al.*,
Petitioners,

v.

A. PHILLIP RANDOLPH, *et al.*,
Respondents.

On Petition for a Writ of Certiorari to the United States Circuit Court of Appeals for the Eighth Circuit

REPLY OF PETITIONERS TO OPPOSING BRIEF OF RESPONDENTS R. D. WOOD, ROY ELLIOTT LANG, JOHN WILLIAM DEARING, HOLLIS ORVAL THOMPSON, AND BROTHERHOOD OF RAILROAD TRAINMEN.

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To the Honorable, the Supreme Court of the United States:

The opposing brief is filed by the brakemen respondents. There is no opposition from the train porters.

Reply to Respondents' Point I.

The brakemen respondents would divorce the Circuit Court's opinion from its judgment. This they cannot do because the judgment remands the causes "for further

proceedings in accordance with the opinion" (R. 708). It follows that errors in the opinion are errors in the judgment. That such errors exist is clearly revealed by the petition and supporting brief.

Erroneously applying the decision of this Court in *Order of Railway Conductors v. Pitney, 326 U. S. 561*, the Circuit Court declared that the brakemen's contentions "are fully sustained" [R. 699; *164 Fed. (2d) 6*]. Immediately preceding this pronouncement, the Circuit Court thus stated one of the contentions of the brakemen:

> "They contend that the court should have stayed exercise of its power to issue injunctional orders and should have relegated the parties to the tribunals specifically provided by Congress in the Railway Labor Act for mediation and for determining the interpretation and application of collective bargaining contracts such as are shown to be involved in this case, in order to finally settle the labor dispute arising out of them, and that the issuance of the temporary injunction in the first instance was erroneous" [R. 699; *164 Fed. (2d) 6*].

Thus the Circuit Court would send the parties to the National Railroad Adjustment Board for a decision of what that Court termed "the real dispute here involved, whether train porters should be permitted to perform the items of work in question or whether railroad trainmen have the exclusive right" to perform such work [R. 700; *164 Fed. (2d) 7*]. But that is not the real dispute here involved because petitioners have already taken the legal steps necessary to withdraw the disputed work from the

train porters* and their right to perform such work is no longer a question which can be submitted to the National Railroad Adjustment Board. The train porters do not challenge the right of petitioners to cancel their contract and to negotiate a new contract which expressly excludes the work in controversy. They merely contend that this right should not be exercised by petitioners because their action has been induced by the wrongful acts of the brakemen. The sole question, therefore, is whether or not these petitioners should be enjoined because of the alleged wrongful acts of the brakemen. This is purely a question of law which only the courts can answer. The power to answer it does not repose in the National Railroad Adjustment Board or in the National Mediation Board.

Furthermore, the Circuit Court misconstrued and misapplied the decision of this Court in the *Pitney case*. That case merely involved the proper interpretation of conflicting agreements. Unlike the present case, the railroad company in the *Pitney case* had not sought "after due notice and in accord with the provisions of the Railway Labor Act" [R. 698; *164 Fed. (2d) 6*], to cancel one contract and to negotiate a new contract expressly eliminating the work

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* The Circuit Court so found:

"The railroads were about to accede to the demands of the trainmen and intended, after due notice and in accord with the provisions of the Railway Labor Act, 45 U. S. C. A. Sec. 152 Seventh and Sec. 156, to cancel the contract with the train porters on which the train porters based their claim of right to do the specific items of train operating work and to negotiate a new contract excluding such items" [R. 697-698; 164 Fed. (2d) 5-6].

"The legal right of the railroads to proceed as they have done and intend to do in respect to their contract with the train porters, is clearly accorded them in the statute, 45 U. S. C. A. Sec. 152 Seventh, and cannot be questioned" [R. 705; 164 Fed. (2d) 9].

in controversy. These facts distinguish the *Pitney case* from the case at bar and show why that case does not control this litigation and why there is no present labor dispute within the jurisdiction of the National Railroad Adjustment Board or the National Mediation Board.

We respectfully submit that this Court should correct the error of the Circuit Court in misconstruing and misapplying the decision of this Court in the *Pitney case* and that this Court should correct the error of the Circuit Court in sending the parties to the National Railroad Adjustment Board for decision of a question which is nonexistent.

Reply to Respondents' Point II.

The Circuit Court stated: "Insofar as the railroads propose to terminate the existing contract with the porters and to change their working conditions, the statute gives the porters the right to resort to the Mediation Board * * *" [R. 703; *164 Fed. (2d) 8*]. It is difficult to reconcile this statement with these previous holdings of the Circuit Court:

> "The railroads were about to accede to the demands of the trainmen and intended, after due notice and in accord with the provisions of the Railway Labor Act, 45 U. S. C. A. Sec. 152 Seventh and Sec. 156, to cancel the contract with the train porters on which the train porters based their claim of right to do the specific items of train operating work and to negotiate a new contract excluding such items" [R. 697-698; *164 Fed. (2d) 5-6*].
>
> "The legal right of the railroads to proceed as they have done and intend to do in respect to their con-

tract with the train porters, is clearly accorded them in the statute, 45 U. S. C. A. Sec. 152 Seventh, and cannot be questioned" [R. 705; *164 Fed. (2d) 9*].

As heretofore stated, the judgment remands the causes "for further proceedings in accordance with the opinion" (R. 708). The opinion, and therefore the judgment, is erroneous if it means that the train porters may now resort to the National Mediation Board.

The Circuit Court correctly found that the petitioners proposed to cancel their contract with the train porters and to negotiate a new contract expressly excluding the work in controversy "after due notice and in accord with the provisions of the Railway Labor Act, 45 U. S. C. A. Sec. 152 Seventh and Sec. 156" [R. 698; *164 Fed. (2d) 6*]. Section 152 Seventh of that Act authorizes changes in rates of pay, rules, or working conditions, as embodied in agreements, provided such changes are made "in the manner prescribed in such agreements or in Section 156 of this title". In attempting to withdraw the disputed work from the train porters, the petitioners proceeded both "in the manner prescribed" in the train porters' agreement (R. 233-234) and in the manner provided in Section 156. Changes made in accordance with an agreement are not subject to review by the National Mediation Board, and proposed changes under Section 156 may be made at the expiration of ten days from the termination of conferences, if there has been no request for or proffer of the services of the Mediation Board. In the instant case, conferences terminated on June 7, 1946 (R. 250) and the services of

the Mediation Board were not requested by the parties (R. 493) nor proffered by the Board (R. 560). It necessarily follows that the train porters have no right to resort to the National Mediation Board and that the Circuit Court erred in declaring that "the statute gives the porters the right to resort to the Mediation Board" [R. 703; *164 Fed. (2d) 8*]. We respectfully submit that this error should be corrected.

Reply to Respondents' Point III.

The failure and refusal of the District Court to comply with the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure were clearly presented to the Circuit Court in petitioners' points 3, 4, 5, and 6 (Petition, pages 8-9; Supporting Brief, pages 46-47). And the last three points were urged as independent grounds of error, not merely in support of petitioners' contention that the temporary injunction should be dissolved. The Circuit Court failed and refused to correct these errors.

When inferior courts fail and refuse to comply with rules promulgated by this Court [Rule 65(c)] and with the federal statutes (38 Stat. 738; 28 U. S. C. A. Sec. 382), to the detriment of litigants (supporting brief, pages 62-71), no citation of authority is needed to support this Court's right of review. And such review cannot be thwarted even though the parties litigant do not specify the corrective measures. That is the prerogative of this

Court which, we respectfully submit, should be exercised in the instant case.

WHEREFORE, petitioners pray, as in their petition, that a writ of certiorari issue under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, commanding that Court to certify and send to this Court a full and complete transcript of the record and proceedings of said Circuit Court in the three consolidated causes, Nos. 13564 and 13565 entitled "Missouri-Kansas-Texas Railroad Company, et al. versus A. Phillip Randolph, et al.", and No. 13566 entitled "R. D. Wood, et al. versus A. Phillip Randolph, et al." to the end that said consolidated causes may be reviewed and determined by this Court as provided by the statutes of the United States; that the judgment of the Circuit Court which ordered the dissolution of the temporary injunction against these petitioners be affirmed; that the Court reverse that portion of the judgment of the Circuit Court which holds or implies that this controversy should be taken to the National Railroad Adjustment Board or to the National Mediation Board; that the Court declare that there is no dispute between these petitioners and their train porters which can be taken either to the National Railroad Adjustment Board or the National Mediation Board; that the Court overrule the action of the District Court and the Circuit Court in refusing and failing to require the train porters to give adequate security as required by Rule 65(c) of the Federal Rules of Civil Pro-

cedure and by the Federal Statutes (38 Stat. 738; 28 U. S. C. A. Sec. 382); that the Court enter an order requiring the train porters to give such security; and for all other and further relief to which petitioners may be entitled.

Dated April 29, 1948.

Respectfully submitted,

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